Consolidation vs. Bundling

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Associate Director for Small Business
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“And so one of the things we're going to do is we're going to examine the federal government's contracting policies, to make sure that they encourage competition as opposed to exclude competition; to make sure that the process is open; to make sure the process helps achieve a noble objective, which is more ownership in our country. ***And wherever possible, we're going to insist we break down large federal contracts so that small business owners have got a fair shot at federal contracting.***”

President George W. Bush

Contract Consolidation

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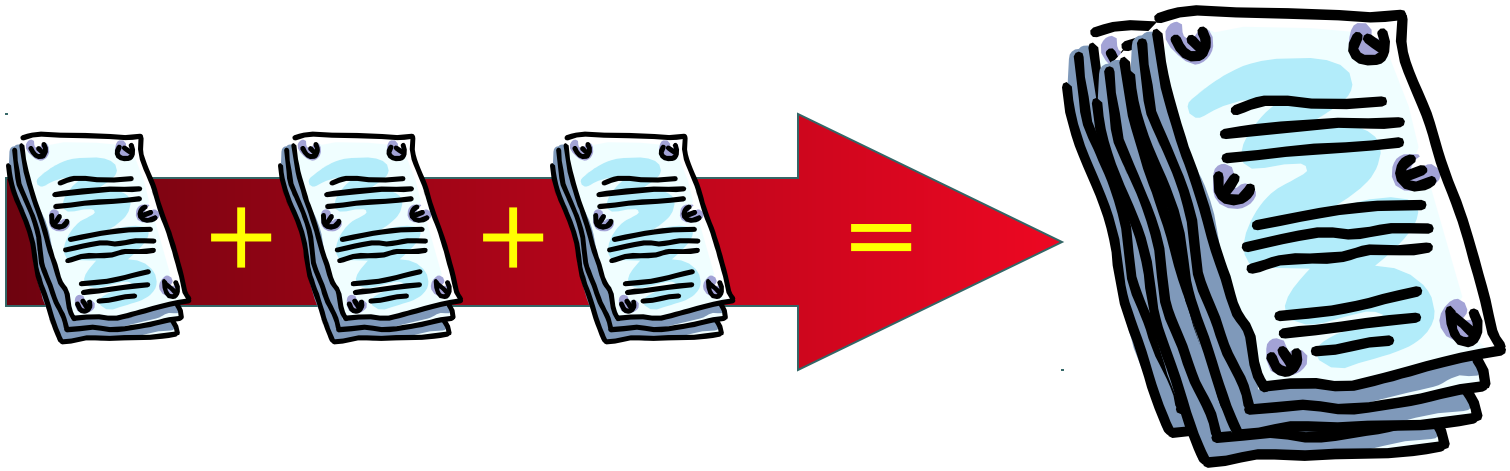
Topics

- What is contract consolidation?
- What if it is necessary and justifiable?

Contract Consolidation is:



Contract Consolidation is:

The use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts.

DFARS 207.170-3(a)

Agencies shall not consolidate contract requirements with an estimated total value exceeding $5,000,000 unless the acquisition strategy includes

(1) The results of market research;

(2) identification of any alternative contracting approaches that would involve a lesser degree of consolidation and …

DFARS 207.170-3(a)

(3) a determination by the senior procurement executive that the consolidation is necessary and justified. All of this documentation must be included in the official contract file.

- **AFARS 5107.170:**

  Authority to make the consolidation determination prescribed at DFARS 207.107(a)(3) is delegated to the HCA where the total value of the consolidated requirements is above $5 million and up to $500 million. (This may be delegated to the PARC for values up to $100 million without further delegation.)

AFARS 5119-202-1(a)

- If circumstances dictate consolidation, written justification supporting this action must be provided by the requiring activity.
- The determination that a consolidated requirement cannot be placed under one of the preference programs must be approved by the HCA prior to release of the solicitation.

Contract Bundling

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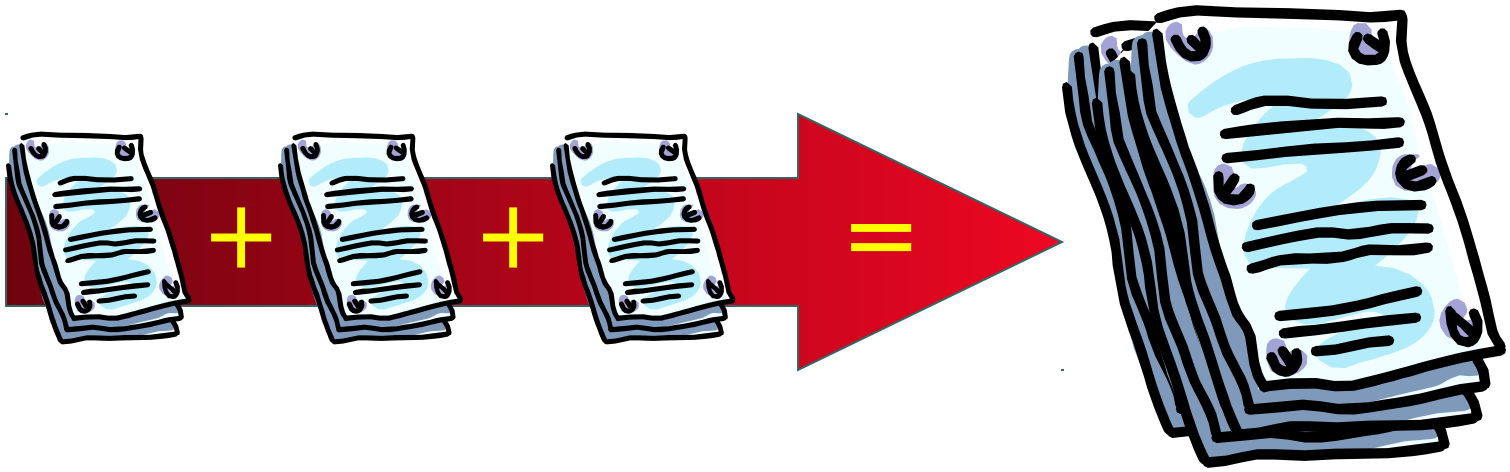
Topics

- What is contract bundling?
- What if it is necessary and justifiable?
- Who is responsible?
- QUIZ

Contract Bundling is:



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Public Law 105-135, Small Business Reauthorization Act of 1997

Contract Bundling is:

Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business

This definition does not apply to any contract that will be awarded and performed entirely outside of the United States.

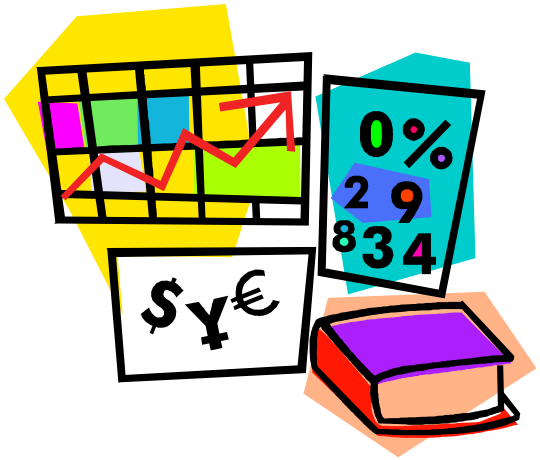
Bundling may provide substantial benefits to the Government.

However, because of the potential impact on small business participation, **market research must be conducted** to determine whether bundling is necessary and justified. Market research **may indicate that bundling is necessary and justified if** an agency or the Government would derive **measurably substantial benefits**.

Measurable Benefits Include

- Cost savings or price reduction,
- Quality improvements that will save time or improve or enhance performance or efficiency,
- Reduction in acquisition cycle times,
- Better terms and conditions,
- And any other benefits.

The agency must quantify the identified benefits and explain how their impact would be measurably substantial.



Substantial Benefits Are

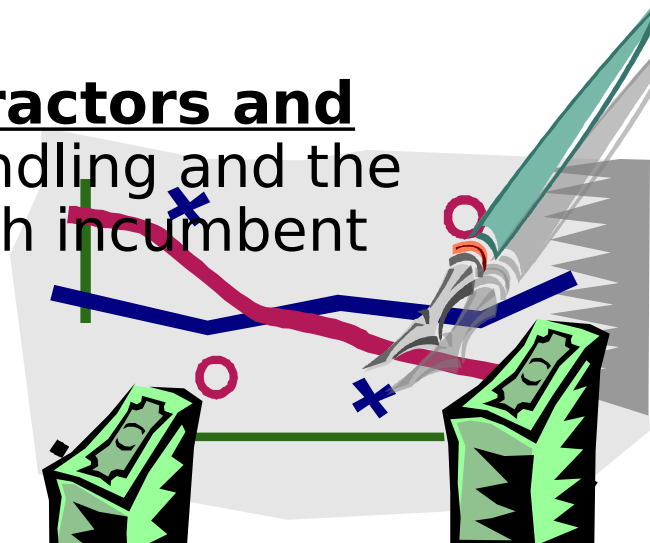
Equivalent to –

- **Ten percent** of the estimated contract or order value (including options) if the value is **$75 million or less**; or
- **Five percent** of the estimated contract or order value (including options) or $7.5 million, whichever is greater, if the value **exceeds $75 million**.

Written Acquisition Strategy/Plan is Required

The Acquisition Plan must:

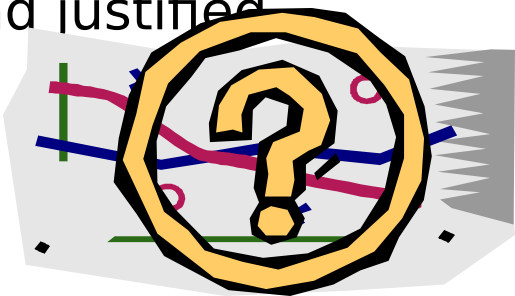
- **document** the **market research** and **analysis**, and indicate the **impact** on the various elements of the plan.
- include **consideration of each of the small business categories** and the impact of any bundling that might affect their participation in the acquisition.
- identify the **incumbent contractors and contracts** affected by the bundling and the impact of any bundling on each incumbent contractor.



Explain Why Necessary

The **contracting officer** must include a statement explaining why the --

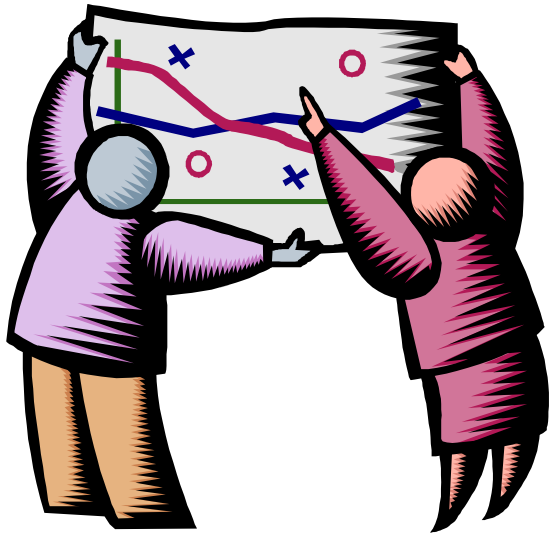
- Proposed acquisition cannot permit offers on quantities less than the total requirement;
- Realistic delivery schedules cannot be established that will encourage small business participation consistent with Government requirements;
- Proposed acquisition cannot be structured to make it likely that small businesses can compete for the prime contract;
- Consolidated project cannot be acquired as separate discrete projects; or
- Bundling is otherwise necessary and justified



Coordinate the Acquisition Plan

- The acquisition plan **shall be coordinated** with the cognizant **SBA PCR and the ADSB** if the estimated contract or order value is **$7 million or more**.

- If the strategy contemplates the award of multiple contracts or orders, the threshold applies to the cumulative maximum potential value, including options, of all of the contracts and



Everyone Is Responsible

Agency Head Responsibility

Ensuring that acquisition planners, to the maximum extent practicable –

- Structure contract requirements to facilitate competition by and among small business concerns; and
- **Avoid unnecessary and unjustified bundling** that precludes small business participation as contractors

Contracting Officer Responsibility

- **Justify bundling** in acquisition plan.
- Include an evaluation factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans.
- Include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor.

Contracting Officer Responsibility

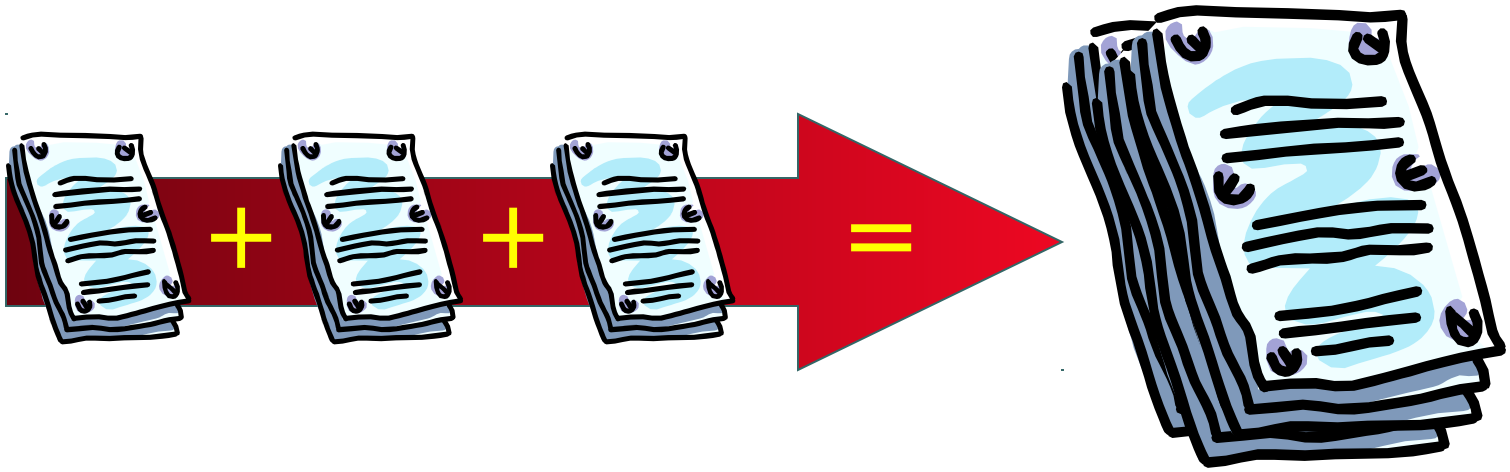
- Provide all information relative to the justification of contract bundling, including the acquisition plan or strategy, to—
  - The SBA PCR, and
  - The ADSB.

ADSB Responsibility

- Work with the SBA PCR to—
  - Identify proposed solicitations that involve bundling;
  - Facilitate small business participation
- Conduct **annual reviews** to assess the—
  - Adequacy of contract bundling documentation and justifications; and
  - Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses.

QUIZ TIME

Define Contract Bundling



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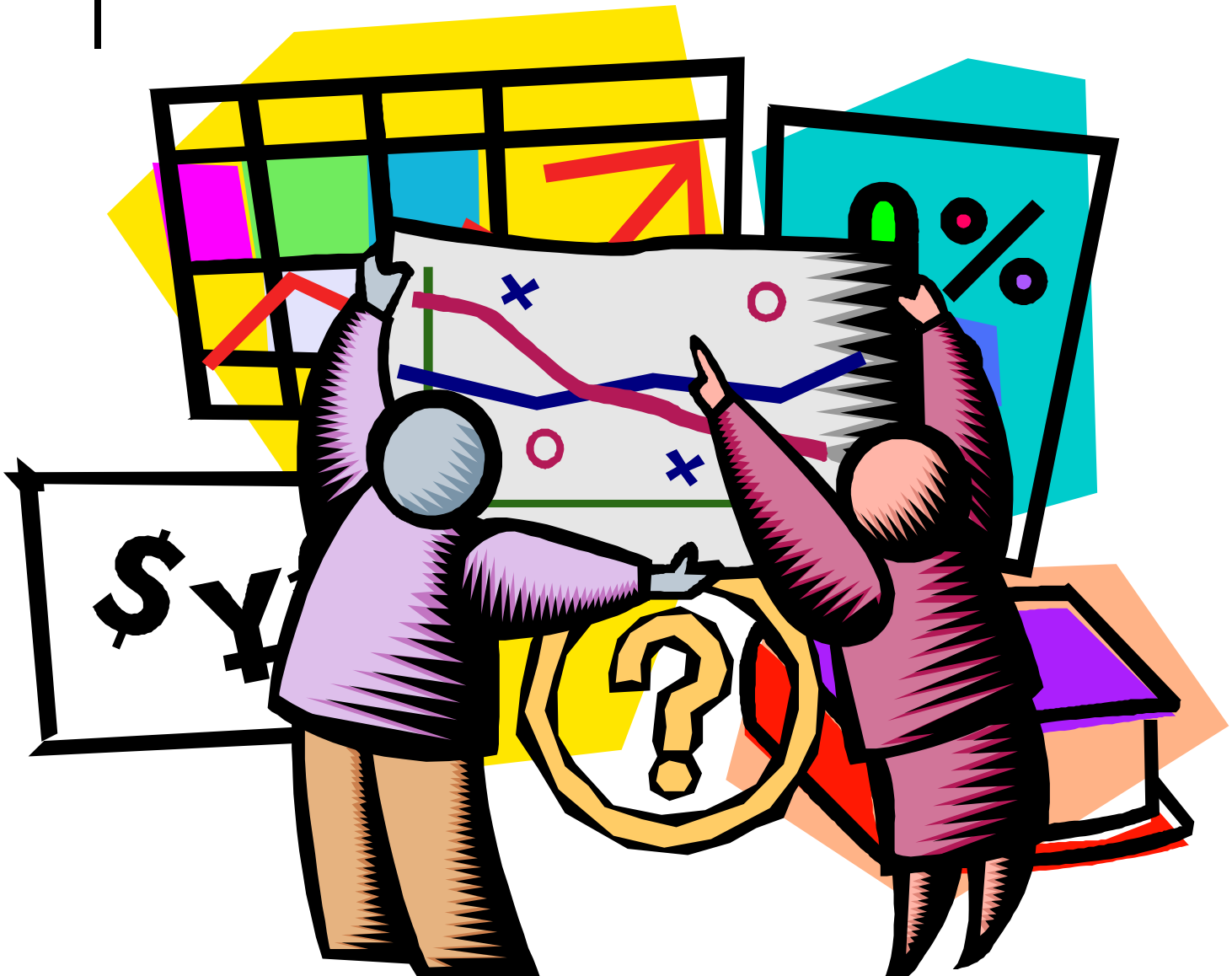
When is bundling necessary and justifiable?

Measurably Substantial Benefit

10%/5%

What needs to be done?



Who is responsible?

EVERYONE is responsible.

Additional Reading

- CONTRACT BUNDLING, A Strategy for Increasing Federal Contracting Opportunities for Small Business, OMB, October 2002 (www.acqnet.gov/Notes/contractbundlingreport.pdf)
- Acquisition Community Connection, Special Contracting Methods: Contract Bundling (Learning Materials) (acc.dau.mil/simplify/ev.php?ID=1267_201&ID2=DO_TOPIC)
- **FAR Parts 7.107, 19.201(d), and 19.202-2**

SCENARIO 1

You are a contracting officer at the North Central Regional Contracting Office. Your regional hospital housekeeping contracts will expire soon and it is time to start the resolicitation process. The last two solicitations for this work covered the medical facilities in most of the region (a major medical center and five medical treatment facilities). The first solicitation resulted in four IDIQ contracts with a total value of $54M, three to large businesses and one to NISH. The last solicitation resulted in three IDIQ awards with a total value of $65M, two to large businesses and one to a small business. That small business has grown and is now considered a large business. If you plan to issue a solicitation like you did the last two times and expect to award multiple IDIQ contracts, would it be considered bundling? What needs to be done before the solicitation is issued?

SCENARIO 2

You are a contracting officer at the North Central Regional Contracting Office. Your Region Commander just returned from a conference where the hottest topic was a relatively new method of records storage and retrieval and he wants to implement it throughout the Region as quickly as possible. This method has never been used in the Region before. There are small businesses that might be able to handle some of the Region but certainly not all of it. There are two large businesses that can handle the entire Region easily. There doesn't seem to be any significant difference in cost if you use large businesses, small businesses, or a combination. If you issue a solicitation requiring implementing this methodology throughout the Region, is this bundling?